IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
CHARLOTTESVILLE DIVISION

UNITED STATES OF AMERICA	)	
	)	Case No. 3:93CR00010
	)	
v.	)	**OPINION AND ORDER**
	)	
ANIF CHRISTOPHER WILLIAMS,	)	By: James P. Jones
	)	United States District Judge
	)	
Defendant.	)	

Jennie L. M. Waering, Assistant United States Attorney, Roanoke, Virginia, for United States; Anif Christopher Williams, Pro Se Defendant.

The defendant, a federal inmate, has filed a pro se "Motion for DNA Testing Pursuant to 18 U.S.C.. § 3600," as well as a related "Motion for the Retention and Preservation of Evidence." The government responded, asserting that the motions should be denied as untimely and without merit. The court notified the defendant of the government's response and granted him an opportunity to submit any reply to their arguments. The time allotted by the court for his reply has since expired, and the defendant has not submitted any argument or evidence contradicting the government's response.[1] Therefore, I consider the defendant's motions ripe for

[1] Three days after the government filed its response, the defendant filed a pleading in which he moved for appointment of counsel and an evidentiary hearing to determine the amount of drugs properly attributable to him for sentencing purposes. I do not find this motion to have any relationship to the present motions and I will address it by separate order.

consideration. Upon review of the record, I find that they must be denied.

I

In December 1993, a jury of this court found Anif Christopher Williams guilty of conspiracy to distribute and possession with intent to distribute crack cocaine, causing the murder of another person while engaged in racketeering activity, and using a firearm during and in relation to a crime of violence or a drug trafficking offense. He was sentenced to a term of life imprisonment, and his conviction and sentence were affirmed on appeal. *See United States v. Hoyte*, 51 F.3d 1239 (4th Cir. 1995), *cert. denied*, 516 U.S. 935 (1995).

In addressing Williams' appeal, the United States Court of Appeals for the Fourth Circuit summarized the evidence from the trial:

> [Williams and his two codefendants, Obed Hoyte and Kenton Perrin,] were operating a drug distribution ring in Charlottesville, Virginia. Dwayne Durrett was a crack user and occasional dealer for the defendants. Durrett was found murdered on the night of March 17, 1993, by the side of U.S. Route 250. He had been shot three or possibly four times. A nine millimeter bullet casing was found near the body.
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> Several witnesses testified at trial that the three defendants had been looking for Durrett the night of his murder and that Durrett was avoiding them. Durrett was observed to have had a sizeable quantity of crack shortly before his murder that he may have stolen from the defendants. Testimony also established that Hoyte owned a nine millimeter pistol.

> A key witness for the Government was Densie Beckford. He had been named in the original indictment with eight other codefendants. He testified he had seen Hoyte and Williams shoot at Durrett and stand over his body. Beckford heard Hoyte say "He's not dead. Let's go get the car and come back." Williams then drove the car back and he, along with Hoyte and Perrin, put Durrett in it. Beckford also told of a later conversation he overheard in which Hoyte and Williams said that after they had taken Durrett out of the car, Hoyte told Williams to shoot him again to make sure he was dead.

Hoyte, 51 F.3d at 1242.

Williams asserts that he is actually innocent of murdering the victim and that he was not involved in any capacity in the commission of that crime. In his current motion, he asserts that to prove his innocence, he is entitled to DNA testing of "material from the automob[ile], bullet casing, and the clothes that Dwayne Durrett was wearing the night he was murdered, and any other item possessed by the government which may have the perpetrator(s) DNA lodged within it." (Motion 6-7.)

II

Pursuant to the Justice for All Act of 2004, a person imprisoned under a federal criminal judgment is entitled to DNA testing of specific evidence related to that conviction if the court finds that ten criteria are met. 18 U.S.C.A. § 3600(a) (West Supp. 2010). These criteria include requirements that the applicant for testing identify "a theory of defense that . . . would establish the actual innocence of the

applicant" and that "[t]he proposed DNA testing of the specific evidence may produce new material evidence that would . . . support the theory of defense . . . and raise a reasonable probability that the applicant did not commit the offense." 18 U.S.C.A. § 3600(a)(6), (8).

The government argues that Williams has not demonstrated that the requested DNA testing could "raise a reasonable probability" that he did not commit the offense under challenge.[2] I agree.

Williams offers the following theory of defense. If DNA testing established that DNA not matching the DNA of Williams or his codefendants or the victim was present on the body, the bullet, or other evidence at the scene where the body was

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[2] The government also argues that Williams' DNA motion is untimely under § 3600(a)(10) and that the evidence he seeks to have tested may have been destroyed in 1999. Neither of these defenses is decisively established.

By order entered September 13, 1999, more than four years after Williams' conviction, the court granted the government's motion to destroy evidence. However, the government has not confirmed that the evidence was *actually* destroyed.

Williams' DNA motion must be presumed untimely, pursuant to § 3600(a)(10)(B) because he did not file it within 60 months of the enactment of this statute or within 36 months of conviction. Although Williams has not expressly attempted to rebut this presumption of untimeliness by the methods defined in the statute, the presumption can be rebutted "upon good cause shown." § 3006(a)(10)(B)(iv). Williams identifies specific types of DNA testing that should be utilized and indicates that they were not available at the time of his offense and trial. If these test methods first became available within the last five years, it is arguable that Williams has good cause for failing to bring his motion within the time periods defined in the statute. However, neither party offers any evidence concerning when the specified testing methods first became available.

found, Williams would be exonerated of the killing. This theory is flawed. At the most, discovery of DNA from a fifth individual on the body or at the scene would establish that a fifth individual touched those items at some time. Such DNA evidence would not undercut in any meaningful way the strength or the reliability of the government's other trial evidence of Williams' presence at the scene of the shooting and his personal involvement in the crime. Accordingly, I find that Williams fails to offer a theory on which DNA evidence would prove him innocent and that the proposed DNA evidence would not raise a reasonable probability that Williams did not commit the offense. His failure to establish these two criteria as required under § 3600(a)(6) and (8) precludes him from demonstrating full compliance with all of the factors necessary to warrant issuance of a court order for DNA testing. Therefore, I must deny his motions.[3]

[3] I find no indication that any physical evidence related to Williams' conviction for the murder of Dwayne Durrett remains in existence. Moreover, Williams fails to demonstrate any ground on which he is entitled to preservation of such evidence if it exists. In support of the Motion for the Retention and Preservation of Evidence, he cites the Fifth and Fourteenth Amendments of the United States Constitution and Rule 34(a) of the Federal Rules of Civil Procedure. Rule 34 applies only in federal civil actions, and the cited constitutional provisions do not require preservation of trial evidence nearly 18 years after the offense conduct where there is no suggestion that the evidence will exculpate the defendant in any way.

III

For the stated reasons, it is **ORDERED** that the defendant's Motion for DNA Testing Pursuant to 18 U.S.C. § 3600 and his Motion for the Preservation of Evidence (ECF Nos. 369 and 371) are DENIED.

ENTER: February 11, 2011

/s/ JAMES P. JONES
United States District Judge